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U.S. Citizenship
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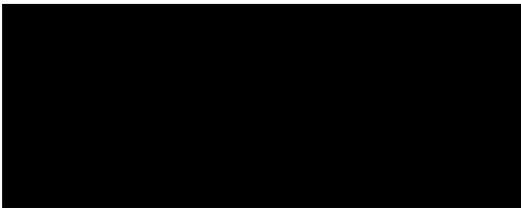
FILE: EAC 03 209 53055 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner produces and sells bags. It seeks to employ the beneficiary as a fashion merchandiser. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a fashion merchandiser. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that fall within three areas: (1) evaluating prior sales to plan and determine future sales; (2) developing, marketing, buying, selling, and managing bags, shoes, sunglasses, and accessories at wholesale and retail levels; and (3) analyzing and creating a business plan aimed at specific customers. Specifically, the beneficiary would manage inventories, determine which products sold daily, examine factory orders, count inventory for extra or missing items, manage the online store inventory, determine the purchase orders for two stores and wholesale customers, place wholesale orders and ensure customers receive consignments, research trends and promotions for specific seasons, analyze and create a business plan, and check and arrange window displays. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in fashion merchandising.

The director determined that the proffered position is not a specialty occupation. According to the director, no evidence establishes that the petitioner requires a candidate with a bachelor's degree. The director found unpersuasive the website information about degree programs and the petitioner's assertions that the proposed position qualifies as a specialty occupation. The director determined that the beneficiary does not possess a bachelor's degree related to the proposed position.

On appeal, counsel states that the proposed position, a specialized management function, is a specialty occupation that is fairly new in the industry, and that the Internet postings reveal a bachelor's degree is required for the proposed position. Counsel states that the petitioner did not previously employ a fashion merchandiser.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position are performed by purchasing specialists. The *Handbook* states:

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or merchandise managers. . . . Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. They must constantly stay informed of the latest trends, because failure to do so could jeopardize profits and the reputation of their company. Buyers also follow ads in newspapers and other media to check competitors' sales activities, and they watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

The use of private-label merchandise and the consolidation of buying departments have increased the responsibilities of retail buyers. Private-label merchandise, produced for a particular retailer, requires buyers to work closely with vendors to develop and obtain the desired product. . . .

Many merchandise managers assist in the planning and implementation of sales promotion programs. Working with merchandise executives, they determine the nature of the sale and purchase items accordingly. Merchandise managers may work with advertising personnel to create an ad campaign. . . . In addition, merchandise managers often visit the selling floor to ensure that goods are properly displayed. Often, assistant buyers are responsible for placing orders and checking shipments.

The *Handbook* indicates that a baccalaureate degree in a specific specialty, such as fashion merchandising, is not required for a purchasing specialist employed in a retail or wholesale company. It states:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and

retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

As already discussed, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. The *Handbook* conveys that for purchasing specialist positions, large stores and distributors in wholesale and retail trade prefer, but do not require, applicants with specific bachelor's degrees. Thus, although employers require applicants for a purchasing specialist position to possess a baccalaureate degree, the degree need not be *in a specific specialty*. The petitioner, therefore, fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The *Handbook's* information about the educational requirements of a purchasing specialist, which is analogous to the proposed position, conflicts with the November 19, 2003 letter from Ms. Mary Troy, Associate Professor, Program Director of Fashion Merchandising & Marketing. In the letter, Ms. Troy narrates the duties of a fashion merchandiser and asserts that the position requires a candidate who possesses a bachelor's degree in fashion merchandising and marketing or the equivalent in work experience. Ms. Troy's assertion is not persuasive: no evidence in the record substantiates her assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to two Internet postings. Although the postings indicate that the employers require a bachelor's degree in a specific specialty, neither posting describes the employer's size. Absent this information, the AAO cannot determine whether the companies are similar in size and scope to the petitioner, a producer and seller of bags with four employees. As such, the postings fail to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proposed position are performed by purchasing specialists, which is an occupation that does not require a specific baccalaureate degree.

Because the petitioner does not have a past practice of employing a fashion merchandiser, it cannot establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

No evidence satisfies the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As discussed already, the *Handbook* reveals that the duties of the proposed position are performed by purchasing specialists, which is an occupation that does not require a specific baccalaureate degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO observes that on appeal counsel submits a copy of the beneficiary's transcript and degree, which establish that the beneficiary holds a bachelor's degree in fashion merchandising.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.